IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 17TH JULY 2007 / 26TH ASHADHA 1929

Bail Appl..No. 4210 of 2007()

CRIME NO.282 OF 2007 OF PEROORKADA POLICE STATION

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: PETITIONER/1ST ACCUSED

RAMESH D.N. @ KANNAN, S/O. DIVAKARAN NAIR, BUNGLAVIL VEEDU, N.C.C.ROAD, PEROORKADA, THIRUVANANTHAPURAM.

BY ADV. SRI.T.A.UNNIKRISHNAN
SRI.K.SATHEESH KUMAR
SRI.P.P.BIJU

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 17/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.4210 of 2007

Dated this the 17th day of July, 2007

ORDER

Application for anticipatory bail. The petitioner is the 1st accused in a crime registered, inter alia, under Section 326, 308 and Section 27 of the Arms Act. The alleged incident took place on 18.05.07. On account of prior animosity arising out of an incident which had taken place a little earlier, the petitioner is alleged to have proceeded on a motor cycle and attacked the victim with a sword. A serious injury was inflicted with such sword on the defacto complainant. The crime was registered. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the allegations are totally false. He first of all contends that there is nothing to show that the hurt suffered is of the aggravated variety of grievous hurt falling under Section 320 I.P.C. He further submits that the allegation under Section 308 I.P.C has been raised without bonafide and with the transparent intention of vexing and harassing the petitioner. By such allegation, the defacto complainant and the police are only attempting to ensure that the petitioner continues in custody for as long a period as possible. The allegations under the Arms Act are also not acceptable, submits the learned counsel for the

petitioner. In these circumstances, anticipatory bail may be granted to the petitioner invoking the extraordinary equitable discretion under Section 438 Cr.P.C, submits the learned counsel for the petitioner.

3. The learned Public Prosecutor opposes the application vehemently. The learned Public Prosecutor concedes that at the moment, there is no specific circumstances which can be pointed out to show that the case would fall within the sweep of Section 326 I.P.C. But the wound certificate have been read over to me. The learned Public Prosecutor submits that a dangerous weapon - sword was used for the infliction of such injury. The weapon of offence has not been recovered. At this early stage of investigation, the petitioner may not be permitted to arm himself with an order of anticipatory bail. That would hamper the interests of a proper and efficient investigation, submits the learned Public Prosecutor.

4. I shall scrupulously avoid a detailed discussion on the acceptability of the allegations or the credibility of the data collected. While I agree with the learned counsel for the petitioner that at the moment there is nothing tangible to indicate that the injuries suffered is a grievous one answering the description under Section 320 I.P.C, I find merit in the submissions of the learned Public Prosecutor that the injury was serious. Taking all the relevant inputs into account, I am not persuaded to agree that this is a fit case where the

extraordinary equitable discretion under Section 438 Cr.P.C can or ought to be invoked. This, I am satisfied, is an eminently fit case where the petitioner must resort to the ordinary and normal course of appearing before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the normal and ordinary course.

5. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-